

Order

Michigan Supreme Court
Lansing, Michigan

July 21, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2005-13

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Administrative Order No. 2009-XX

Proposal to Establish and Require
Compliance with Court Collections
Program and Reporting Requirements

On order of the Court, this is to advise that the Court is considering adoption of an administrative order that would require the State Court Administrator to establish court collections program and reporting requirements and that would require courts to comply with those requirements. Before the Court determines whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website at www.courts.mi.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

Enforcing court orders, including financial sanctions, is a responsibility of the courts that, if done effectively, enhances the courts' integrity and credibility while providing funds to assure victims are made whole and support law enforcement, libraries, the crime victim's rights fund, and local governments. In order to improve the enforcement and collection of court-ordered financial sanctions, it is ordered that the State Court Administrator establish court collections program requirements and that all circuit courts, circuit court family divisions, district courts, and municipal courts comply with those requirements. The State Court Administrative Office shall enforce the requirements and assist courts in adopting practices in compliance with those requirements.¹

¹ In order to provide a context for commenting on this proposed administrative order, the current program requirements and components drafted by SCAO and approved by the Court Collections Advisory Committee are attached as an appendix. For more information regarding the Court Collections Advisory Committee's activities over the last five years, please see the materials related to collections on the Court's website at <http://courts.michigan.gov/scao/services/collections/collections.htm>.

In order to effectively monitor and measure the effect of collections programs, it is ordered that the State Court Administrator establish reporting requirements regarding outstanding receivables and collections efforts undertaken by courts, including establishment of the reporting format, method, and due dates. It is further ordered that all circuit courts, circuit court family divisions, district courts, and municipal courts comply with those requirements. The State Court Administrative Office shall facilitate compliance with and enforce the requirements.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2009, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-13. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 21, 2009

Corbin R. Davis

Clerk

APPENDIX

Court Collections Program Requirements

- Each court must implement or have a collections program in place that conforms to a model developed by the State Court Administrative Office (SCAO) and is designed to improve collections through application of best practices.
- Each court will submit to the SCAO an initial collections program survey with information regarding the program.
- Courts shall report changes in their collections program when requested by the SCAO.
- Courts that do not meet the minimum requirements for an adequate collections program will prepare an action plan to implement program components, with a timetable for intermediate and full implementation, which should not exceed one year. Action plans will be submitted with the collections program survey to the regional administrator for approval by the state court administrator. The court will provide a progress report to the regional administrator one month after implementation.
- The SCAO shall provide for periodic audits of the courts to verify information reported above and confirm that the court is complying with its reported program components. Compliance audit standards include:
 - To be in substantial compliance with program components, the requirement must be met for at least 80 percent of the cases at that stage of collection.
 - To be in partial compliance with program components, the requirement must be met for at least 50 percent of the cases at that stage of collection.
 - To meet the requirements of a collections program model, a court cannot be in less than partial compliance with any component, may be in partial compliance with maximum of one component, and must be in substantial compliance with all other components. If an audit reveals that a court is not in compliance with a collections program, the court must submit a corrective action plan to implement program components, with a timetable for intermediate and full implementation, which should not exceed one year. Corrective action plans will be submitted to the regional administrator for approval by the state court administrator. A follow-up compliance audit will be performed within a year of implementation.
- The SCAO shall:
 - Make available on its collections website collections program requirements and best practices.
 - Assist courts in implementing a program by providing training, consultation, and technical assistance.

- Provide courts with current collections data, which must include collections rates and collections programs implemented by the courts.
- Ensure that appropriate training programs are in place to educate all stakeholders.

Court Collections Program Models

Ideal

- Must consist of all 10 components

Satisfactory

- Must consist of components either 1 through 9 or 1 through 8

Adequate

- Must consist of components 1 through 7

These are the minimum requirements for each model. Court collections programs may have additional components not included in these models.

Regardless of collections rates, a court that has implemented an *ideal*, *satisfactory*, or *adequate* collections program is in compliance with the *Court Collections Program Requirements*. A court that does not meet the requirements for an *adequate* collections program is not in compliance with the *Court Collections Program Requirements* and must prepare and submit an action plan to become compliant.

Court Collections Program Components – Details

1. Staff or staff time dedicated exclusively to collections activities.
 - a. This may include court, funding unit, or contractual employees.
 - b. Collections staff perform the following functions:
 - i. Respond to all collections-related phone calls and written correspondence.
 - ii. Ensure that financial assessments are properly entered into the automated system.
 - iii. Ensure proper removal of discharged debts from the system.
 - iv. Use all available resources to locate litigants.

- v. Review dockets for all judges, magistrates, and referees to determine if an individual who is delinquent will be present for a court proceeding for any reason.
- vi. Get jail release dates from the sheriff and make payment arrangements with litigants before release.
- vii. Make payment arrangements with litigants as they leave the courtroom.
- viii. Review and verify all financial statements to determine a litigant's ability to pay.
- ix. Establish and monitor all installment payment plans.
- x. Prepare wage assignments.
- xi. Issue delinquency notices.
- xii. Prepare orders to show cause.
- xiii. Prepare bench warrants.
- xiv. Prepare state income tax garnishments.
- xv. Prepare cases for referral to outside agency for collections.

2. Enforcement of MCR 1.110 and communication of the expectation of payment.

- a. All correspondence and contact with the litigant refer to MCR 1.110, which states that payment is due at the time of assessment. In addition, an estimated amount that the litigant will be expected to pay is included in all correspondence. The court:
 - i. Informs litigants from the bench at the initial hearing or pretrial that payment is due upon assessment and provides an estimated amount due.
 - ii. Prints the text of MCR 1.110 on all notices to appear.
 - iii. Advises litigants at the probation screening of the date payment is due and the amount of the expected payment.
- b. The court educates the local legal community, as well as the general public, that payment is required at the time of assessment.

3. Payment requirement on the day of assessment.

- a. Litigants unable to pay in full on the day of sentencing or disposition are expected to make some payment on the day of assessment. In addition, they are required to complete an application/financial statement for either an extension of time to pay or installment payments.
- b. Discussions that relate to requests for additional time to pay, installment payment plans, or wage assignments do not occur in the courtroom. The litigant is led out of the courtroom to discuss payment options with an individual who has been given the responsibility to set up payment plans.

4. Application/financial statement information is verified and evaluated to establish an appropriate payment plan.

- a. Litigants are not automatically given time to pay. Before granting additional time to pay or approval for participation in an installment payment plan, the litigant is required to submit proof that he or she needs more time to pay. The litigant is required to complete an application or financial statement that the court analyzes to determine if extra time to pay or an installment payment plan is justified.
 - b. Payment plans require the highest payment amounts in the shortest period that the litigant can successfully make, considering the amount owed and the litigant's ability to pay.
 - c. If the court determines that an installment payment plan is warranted, the litigant is required to sign an installment payment agreement. This document states that the litigant agrees to make payments of the court-ordered assessments, and includes the following information:
 - i. Total amount owed.
 - ii. Amount of installment payment.
 - iii. Payment intervals (weekly/biweekly/monthly).
 - iv. Specific due dates of each payment.
 - v. Date the balance should be paid in full.
 - vi. Statement detailing any sanctions that will be imposed if the litigant fails to comply with the agreement.
 - vii. Litigant's signature signifying his or her understanding of the agreement.
5. Payment alternatives such as community service are available for those who do not have the ability to pay.
- a. Payment alternatives such as community service are not considered unless the litigant is in jeopardy of failing to comply with the court order and has demonstrated that he or she has exercised due diligence in attempting to comply.
 - b. Payment alternatives may not be used to satisfy certain required assessments (restitution, crime victim's rights assessment, minimum state cost, etc.).
6. Litigants are closely monitored for compliance, and actions such as delinquency notices and wage assignments are taken promptly after noncompliance.
- a. The court has established a consistent time standard for initiating enforcement action when a debt becomes past due. This time standard is not so lengthy as to diminish the effectiveness of enforcement.
 - b. The court promptly notifies the litigant of delinquency.
 - c. The court requires a wage assignment for all litigants who are employed and who are granted an installment payment plan; or when an installment payment plan is granted to a litigant, he or she is required to complete a

wage assignment with the understanding that if a payment is missed, the court will immediately send the wage assignment to the employer.

7. Submit required receivables and collections reports to the SCAO annually.
 - a. The SCAO has established deadlines and standards applicable to the reports required from all circuit courts, circuit court family divisions, district courts, and municipal courts.
 - b. The court reviews and utilizes these reports to monitor court collections.
8. Promptly and consistently use statutorily permitted graduated sanctions such as 20 percent late penalty, show cause hearings, bench warrants, and/or state income tax garnishment/intercept.
 - a. The 20 percent late penalty is assessed as required by statute. In addition, the court informs the litigant of the penalty.
 - b. If a litigant fails to respond to initial collections efforts, the court sends an order to show cause that requires the litigant to come into court to explain why he or she has not paid the court-ordered assessments. If the litigant fails to appear as ordered, then a warrant for failure to appear is issued for the person's arrest.
9. Use of locator services.
 - a. A litigant's personal contact information (home phone number, cell phone number, address, etc.) is verified every time a contact is made with the court.
 - b. A litigant's financial and employment information is verified every time a collections and/or probation contact is made with the court.
 - c. The court uses a locator service(s) to help maintain accurate contact information. While the SCAO does not recommend or certify any specific locator service, there are several that have been used by courts. Some will be at a cost, and others will not. These services include:
 - i. www accurint.com
 - ii. www.choicpoint.com
 - iii. www.switchboard.com
 - iv. www.yellowpages.com
 - v. www.daplus.us
 - vi. www.zabasearch.com
 - vii. www.whitepages.com
 - viii. Judicial Data Warehouse www.scao.us
 - ix. Michigan Department of Corrections Offender Tracking Information System (OTIS) www.michigan.gov/corrections
 - x. For company information:
 1. www.michigan.gov/corporations
 2. www.bbb.com

10. Referral to outside agency for collections after all in-house collections efforts are exhausted.

- a. The determination to use a third party for collections should be made on a court-by-court basis. A court must determine at what point in the collections process it has little hope of collecting the obligation and when the expense of using a third-party collector is justified. For more complex collections cases, the costs of a third-party collector may not be a factor, because after the court's internal collections efforts have failed and the court has deemed the debt to be uncollectible, any money that a third party collects is money that would not have been collected otherwise.